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Holland & Hart LLP

# INTERMOUNTAIN POWER SERVICE CORPORATION

October 5, 2004

Mr. Richard Sprott, Director Utah Division of Air Quality 150 North 1950 West P.O. Box 144820 Salt Lake City, UT 84114-4820

Dear Mr. Sprott:

DAQC-1255-2004 (Proposed Settlement Agreement, September 14, 2004)

Enclosed please find the Acceptance of Settlement Offer signed on behalf of Intermountain Power Service Corporation ("IPSC") in the captioned matter. As noted in the September 14, 2004 Proposed Settlement Agreement ("PSA"), acceptance of the offer within 30 days of receipt of the PSA resolves the enforcement issues described in the PSA. We should note that IPSC received the PSA on September 16, 2004.

As we explained in our meeting with Division of Air Quality (DAQ) staff on September 30, the process of securing the check for payment of the proposed civil penalty (as discounted) will take a few weeks, given the required internal processes. Accordingly, the check in the amount of \$28,712 for payment of the discounted proposed civil penalty will be delivered to the DAQ by the end of October 2004.

IPSC is agreeing to the PSA in order to resolve the issues raised in the PSA and to devote our time and resources to operating the facility in compliance with permit conditions and other requirements. Having said that, however, we emphasize that we have significant concerns with the mechanical nature of the PSA's proposed civil penalty assessment.

DAQ staff explained to us at the September 30 meeting that the proposed civil penalties were calculated using a computer program, and that the DAQ does not have any flexibility to make adjustments to those amounts based on case-specific circumstances. For example, the program factors in facility compliance history for the last five years. In this case, IPSC had three very minor violations at the same time about four years ago, resulting in a \$900 penalty (\$300 per violation). Further, IPSC had not had any violations prior to those minor ones for over 13 years. The computer program, we were told at the September 30 meeting, does not distinguish between very minor violations and violations which adversely affects human health or the environment in factoring in prior enforcement history. Not only do we think the program inflated the penalty amounts because it did not identify the past violations as being minor in nature, but we are concerned that any future violation at the facility within the next five years would result in grossly disproportionately inflated proposed civil penalties because it would not take into account the minor nature of the violations at issue here.

Mr. Richard Sprott October 5, 2004 Page 2

Both the statute and the DAQ's civil penalty policy clearly contemplate that the DAQ has discretion in proposing civil penalties in response to a violation. The mechanical use of a computer program to calculate proposed penalties combined with the refusal by the DAQ to consider any case-specific circumstances is, we believe, an abdication of that discretionary authority. We do not disagree that computer programs are useful in setting proposed penalties; however, we also believe that the DAQ should be willing to consider case-specific circumstances that the computer program does not account for.

We strongly urge the DAQ to reassess how it uses the computer calculations in setting proposed civil penalties to allow for the use of discretion to adjust those proposed penalties in specific cases as circumstances and equity warrant.

As the final part of this letter, I certify that, based on information and belief formed after reasonable inquiry, that the statements and information contained in this document are true, accurate, and complete. Should you have any questions, please feel free to contact Mr. Dennis Killian of my Staff at (435) 864-4414.

Sincerely,

Acorg W. Cross

HBI/BP:jmj Attachment

President & Chief Operations Officer and Responsible Official

cc:

Eric Tharp Jim Holtkamp



State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D. Executive Director

DIVISION OF AIR QUALITY Richard W. Sprott Director OLENES. WALKER
Governor

GAYLE F. McKEACHNIE

Lieutenant Governor

DAQC-1255-2004 Site ID 10327 - b-1

September 14, 2004

SENT VIA CERTIFIED MAIL NO. 7002 0510 0000 63 92 2553 Return Receipt Requested

George W. Cross, Responsible Official President & Chief Operations Officer Intermountain Power Service Corporation 850 West Brush Wellman Road Delta, Utah 84624

Dear Mr. Cross:

Re: Proposed Settlement Agreement in the matter of Intermountain Power Service Corporation Millard County, Utah

Intermountain Power Service Corporation (IPSC) operates an electric utility generating facility located at 850 West Brush Wellman Road, in Delta, Utah.

On March 30, 2004, an inspector of the Division of Air Quality noted the following:

- fifty-five observations on the Dust Collector Daily Monitoring Reports for group 1 and 2 baghouses had missing data;
- 2. the semi-annual monitoring report for July 1 December 31, 2003, did not include data on an excursion (observed opacity) from the coal transfer #2 dust collector 5; and
- deviation reports for the deficiencies listed above were not submitted within 14 days.

The inspector informed IPSC representatives that conditions II.B.8.b.1(III)(4) and II.B.9.a.1(III)(4) of the Title V permit require the observation of each applicable emission point (group 1 and group 2 baghouses) to be documented by the observer, condition II.B.8.b.3 requires summary information on the number,

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T.D.D. (801) 536-4414 • www.deq.utah.gov



DAQC-1255-2004 Page 2 of 3

duration and cause of excursions and the corrective actions taken to be included in the semi-annual monitoring report; and condition 1.S.2.c requires notification of any deviation from permit requirements within 14 days.

On May 13, 2004, the Division issued a Compliance Advisory to IPSC. On May 19, 2004, IPSC responded to the compliance advisory. Based on IPSC's response to the Compliance Advisory, the Division determined that IPSC was in violation of conditions II.B.8.b.1(III)(4), II.B.9.a.1(III)(4), II.B.8.b.3, and I.S.2.c of the Title V permit dated August 8, 2003.

Section 19-2-115 of the Utah Code Annotated provides that violators of the Utah Air Conservation Act and/or any order issued thereunder may be subject to a civil penalty of up to \$10,000 per day for each violation. Based upon our civil penalty policy, we calculated a preliminary civil penalty for the above listed violations of \$35,890.00. The monetary amount of the Division's settlement offer specified below is derived from a pre-established schedule of penalties, which takes into account, among other factors, the magnitude and severity of the violation, cooperation of the source, as well as the prior history of violations at the facility. All parties we deal with, whether private, commercial, or governmental, are treated similarly in the settlement process. Settlement offers are based on the evaluation of the same factors and criteria in all cases. The Division acknowledges that the violations on March 30, 2004, were corrected by providing training sessions with the personnel involved.

If you are interested in settling this violation, we are authorized to offer settlement in accordance with the Division's settlement policy as follows:

Payment of a reduced civil penalty in the sum of \$28,712.00. Payment of a civil penalty
precludes further civil prosecution for the above-described violation against the named source.
The Division retains its authority to take enforcement actions based on any and all violations not
specifically described above.

 In the event any further violations of air quality regulations occur, the Division may consider the violation described above in assessing a penalty for the subsequent violations, in accordance with

the provisions of UAC R307-130.

3. Entering into this settlement shall not constitute an admission of violation of the air quality rules, nor shall it be inferred to be such an admission in any administrative or judicial proceeding. The described violation will constitute part of the source's compliance history for any purpose for which such history is relevant to the Division of Air Quality.

This letter constitutes an offer of settlement and is not a demand for payment. We will be glad to consider any information you wish to submit related to the alleged violations. The agreement reflects a reduced penalty for early settlement of this matter.

If the above terms are acceptable to you, sign and return a copy of this letter and a check in the sum of \$28,712.00, which reflects the reduced penalties, made payable to the Utah Division of Air Quality, at the letterhead address.

You may write or call to request a settlement conference with a member of the Division's compliance staff listed below. A conference must be scheduled within twenty (20) days of your receipt of this settlement proposal letter. If you request such a meeting this settlement offer is immediately revoked.

DAQC-1255-2004 Page 3 of 3

If we do not hear from you within twenty (20) days of your receipt of this settlement proposal letter, we will assume that you are not interested in resolving this matter as outlined above and will refer the violation to a formal enforcement process. Please call Debbie Olson at (801) 536-4055 if you have any further questions regarding this matter.

ecutive Secretary

Utah Air Quality Board

RWS:DO:aj

cc:

Central Utah Public Health Department

EPA Region VIII, Carol Smith

Acceptance of Settlement Offer

I have read the above settlement and agree to the terms and conditions of this offer.

Name: George W. Cross

Title: President + C.O.O.

Enclosures:

Penalty Calculation and Criteria

Utah Division of Air Qualit	y General Administrative Penalty Worksheet			-			-	-		
Source: Intermountain Power		6度	1	Class	sı A					1
SID No.: 10327	HPV: yes	2	ď	Viola	tion D	nte: N	iarch	30, 20	04	Home
		I V	1	1						
Table 1: Gravity Criteria				Gravity Criteria (Gc) No(0), Possibly(1), Probably(2), Definitely(						Gravity Criteria
	Description of the violation			961	202	Gc 3	Go 4	Qc.	Daily Gravity	Accumulated Gravity
Citation	Description of Events Resulting in Excess Emissions	18	( X	11111	民等	Call Co		i Filte	Gravity	Olavay
Title V permit dated August 8,	condition H.B.8.b.1(III)(4) and H.B.9.a.1(III)(4) for not		С	1 ,	1	0	١,	0		l .
2004, #2700010001	documenting all daily observations of group 1 and 2 baghouses (55 observations had missing data)	55	Ľ	L	Ľ	Ľ	Ľ	Ľ	\$449.00	\$24,695.00
		$\vdash$	$\vdash$		-		-	$\vdash$	<b> </b>	· · · · · ·
	condition II.B.8.b.3 for not including the observed opacity (excursion) from the coal transfer #2 dust collector 5 on	1	c	1	l i	0	0	0		
	December 15, 2003, on the semi-annual monitoring report.	1	-	Ι'		ľ	"	ľ		
	Decimon 15, 2005, on the Series Medical Report	$\vdash$	_	_	_	_	-	-	\$449.00	\$449.00
	condition I.S.2.c for not notifying the DAQ of deviations	-	_	_	-	_	-			
	from permit requirements within 14 days (55 missing									
	observations occurred on 13 different days + 1 deviation	14	С	1	1	1	0	0		
	report for the semi-annual report).								\$589.00	\$8,246.00
						_				
		-	-	_			_	-		i
· · · · · · · · · · · · · · · · · · ·			-	-	-			-		
Gc 5 History of violations with	in the last five (5) years? Enter "d" in Category	T	d		-	-	-		\$2,500.00	\$2,500.00
	hin the last five (5) years? Enter 'd' in Category								7-10-10-0	42000.00
	Total Gravity								\$3,987.00	\$35,890.00
	Canal	100								
Table 2: Adjustments	7									
Economic Benefit	EPA "BEN" Model (Collected)	_								
							-	-		
					-	-		-		
Other	Other Monies Collected									
	SEP - (Credited)									
	Early Settlement Reduction (20%) -								\$7.	178.00
Total Penalty							\$28	712.00		
<b>Gravity Criteria Definitions</b>	tt of excess emissions and/or reporting?									
Gc 1. Was the violation a resu										
(0) Answer "no"	If the violation was not the result emissions, reporting, or other									
1) Answer "possibly"	If a minor reporting or other problem occurred, but no emissions were involved									
(2) Answer "probably" (3) Answer "definitely"	If a reporting or other problem occurred which involved emissions  If a permit reporting or other significant problem occurred involving emissions									
3) Answer benniesy	is a permit reporting to outer argument problem securics at		-	3370113						
Gc 2. Was it a willful of knowin	g violation?			1.55						
(0) Answer "no"	If the violator obviously did not know that the action or inacti	0n co	nstitu	ited a v	iolatio	n?			1	
(1) Answer "possibly"	If the violator should have know									
(2) Answer "probably"	If the violator likely knew									
(3) Answer "definitely"	If the violator clearly knew						_			
Sc 3 Was the violator unrespy	onsive in correcting the violation?		-			_	_			
0) Answer "no"	If the violation was corrected as soon as the violator learned o	fit 1d	lv.							
1) Answer "possibly"	If the violation was corrected in a less timely and cooperative		-	days.						
2) Answer "probably"	If the violator attempted to correct the problem, but did not correct it 8-30 days									
3) Answer "definitely"	If the violator did not attempt to correct the problem > 30 days	5								
2 - F. 10 - 10 - 10 - 10 - 10 - 10 - 10 - 10	Control of the second									
	t of improper operation or inadequate maintenance?									
0) Answer "no"	If the violator was following an acceptable O & M plan.  If the violator was following an O & M plan that was not adequate.									
Answer "possibly"     Answer "probably"	If the violator was following an O & M plan that was not adequate  If the violator did not have an O & M plan									
Answer "definitely"	If the violator did not have an O & M plan and the violation w	as cle	arly a	result	of ime	mper C	) & M			
- I - I - I - I - I - I - I - I - I - I	and the state of t			, sout		Spent C	17E	_		
Sc 6. Did the violator benefit ed	conomically from noncompliance?						-			
0) Answer "no"	If the violator clearly did not obtain any economic benefit (less	i than	\$5,0	00)					- 1	
<ol> <li>Answer "possibly"</li> </ol>	If the violator may have benefited									
2) Answer "probably"	If the violator benefited, but the benefit is not quantifiable									
<ol> <li>Answer "definitely"</li> </ol>	If the economic benefit to the violator is quantifiable (use BEN	Prog	ram)							

#### R307-130. General Penalty Policy

#### H307-130-1 Scope.

This policy provides guidance to the executive secretary of the Air Quality Board in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

#### R307-130-2. Categories.

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category one listed.

## Category A - \$7,000 to \$10,000 per day

Violations with high potential for impact on public health and the environment including:

- (a) Violations of emission standards and limitations of NESHAP
- (b) Emissions contributing to non-attainment area or PSD increment exceedaences.
- (c) Emissions resulting in documented public health effects and/or environmental damage.

## Category B \$2,000 to \$7,000 per day

Violations of the Utah Air Conservation Act, applicable state and lederal regulations, and orders to include:

- (a) Significant levels of emissions resulting form yiolations of emission ilmitations or other regulations which are not Category A
- (b) Substantial non-compliance with monitoring requirements.
- (c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A
- (b) Significant and/or knowing violations of "notice of intent" and other notification requirements.
- (e) Violations of Reporting requirements

### Category C Up to \$2,000 per day

Minor violations of the Utah Air Conservation Act, applicable state and federal regulations, and orders having no significant public health or environmental impact to include:

- (a) Reporting violations
- (b) Minor violations of monitoring requirements, orders and agreements.
- (c) Minor violations of emission limitations or other regulatory requirements

#### Category D Up to \$299.00

Violations of specific provisions of which are considered minor to include:

- (a) Violations of automobile emission standards and requirements.
- (b) Violation of wood-burning regulations by private individuals
- (c) Open burning violations by private individuals.